

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NITKA, INC., :  
Plaintiff, : 24-CV-5688(NG)

-against- :  
ZILLOW, INC., : United States Courthouse  
Defendant. : Brooklyn, New York

November 25, 2024  
2:00 p.m.

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TRANSCRIPT OF CIVIL CAUSE FOR PREMOTION CONFERENCE  
BEFORE THE HONORABLE NINA GERSHON  
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: DAVIDOFF HUTCHER & CITRON LLP  
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New York, NY 10016  
BY: DANIEL R. GOLDENBERG, ESQ.  
ALEXANDER P. McBRIDE, ESQ.

For the Defendant: BUCHANAN INGERSOLL & ROONEY PC  
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1 THE COURTROOM DEPUTY: Civil cause for a premotion  
2 conference on Nitka vs. Zillow, Inc. Docket No. 24-CV-5688.

3 May I have the appearances for the Plaintiff,  
4 please.

5 MR. GOLDENBERG: Sure.

6 Good afternoon, everyone.

7 My name is Daniel Goldenberg from Davidoff Hutcher &  
8 Citron.

9 THE COURT: Is it Goldenberg?

10 MR. GOLDENBERG: Goldenberg. Yes, Your Honor.

11 THE COURT: You don't have to lean over. I think it  
12 should pick up your voice.

13 Can you hear me?

14 MR. GOLDENBERG: I can.

15 THE COURT: Okay.

16 And with you?

17 MR. McBRIDE: Good afternoon, Your Honor.

18 Alex McBride from Davidoff Hutcher & Citron as well.

19 THE COURTROOM DEPUTY: Thank you.

20 For the Defendant.

21 MR. SLOTNICK: Good afternoon, Your Honor.

22 I'm Stuart Slotnick from the law firm of Buchanan  
23 Ingersoll & Rooney representing Defendant Zillow.

24 THE COURTROOM DEPUTY: Thank you.

25 THE COURT: Victor, do we have a new clock?

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1 (Discussion off the record.)

2 THE COURT: So, Counsel, let's take a first look at  
3 this, the personal jurisdiction issue.

4 Mr. Slotnick, let me just begin with you. Why  
5 doesn't *Mallory* take care of this.

6 MR. SLOTNICK: Because, Your Honor, *Mallory*  
7 addresses a Pennsylvania statute. The statute permitted  
8 general jurisdiction in the case of a foreign business  
9 corporation that registered to do business in that state.  
10 New York State does not have a similar statute. And, in fact,  
11 that statute was rejected by Governor Hochul in 2023. And I  
12 can give Your Honor the name of the bill that was proposed.  
13 It was Senate Bill S7476 in December 2023.

14 THE COURT: So you're saying absent a statute, the  
15 Supreme Court doesn't allow personal jurisdiction to be  
16 determined by a consensual statement from a defendant?

17 MR. SLOTNICK: I think what I'm saying is that just  
18 *Mallory* doesn't apply because they talked about the  
19 constitutionality of a statute that doesn't exist in New York.

20 In this case, the Defendant Zillow has its  
21 headquarters and is incorporated in Washington State. And  
22 doing an analysis under *Daimler* and also under the  
23 *Chufen Chen v. Dunkin' Brands*, there's no -- I don't believe  
24 there are any exceptional circumstances in this case.

25 THE COURT: Well, let's stay on the consent issue

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1 first. Okay?

2 So, if the New York statute -- do you agree with  
3 Nitka that you do, in fact -- your client holds a  
4 New York State real estate brokerage license and that it  
5 actually says that every such license holder shall file an  
6 irrevocable consent to the jurisdiction of the courts of the  
7 state?

8 MR. SLOTNICK: So, I do agree that my client did  
9 sign that.

10 And there are a few points that are related to that.  
11 First is, it's -- the consent is to the courts of  
12 the State of New York, not the courts in the --

13 THE COURT: You're going to exclude us here?

14 MR. SLOTNICK: I am.

15 And I'm relying, Your Honor, on cases that consider  
16 the very same. That cases of the state means state court  
17 versus cases in the state, which would include federal courts.

18 And what I am relying upon, and I quote, "a majority  
19 of courts have held that," quote, "the courts of a state  
20 refers only to state courts, and not to state and federal  
21 courts. And that case is *Beach v. Citigroup Alternative* and  
22 it's a Southern District case, March 7, 2014. It's 2014  
23 Westlaw 904650.

24 There are other cases if Your Honor would like me to  
25 put them on the record.

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1 THE COURT: No, it's not necessary because you need  
2 to brief it. When you brief it.

3 MR. SLOTNICK: And additionally, Your Honor. If I  
4 may?

5 THE COURT: Yes.

6 MR. SLOTNICK: That not only does it say the states  
7 of, but it's our position that signing a real estate licensing  
8 form would not apply to general jurisdiction of every type of  
9 case, particularly because the facts in this case don't arise  
10 out of a real estate license and it would -- from our  
11 position, it would be nonsensical that Zillow would consent to  
12 general jurisdiction based on having a real estate license  
13 when this case is really an issue that Zillow and Plaintiff  
14 were in conversation with hiring staff. And ultimately,  
15 although it's not clear from the allegations in the complaint,  
16 which is part of my problem, is that ultimately Plaintiff  
17 would never have gone and paid for any of the work they've  
18 done in the ramp-up to try and find staff until Zillow  
19 actually hired one of the people that Plaintiff was seeking to  
20 propose that Zillow hire, in which case they would be paid on  
21 an hourly basis. The employee would receive some sum of money  
22 and then Plaintiff would also receive some sum of money. So  
23 this has nothing to do with a real estate license or buying or  
24 selling real estate, although everyone knows that Zillow is,  
25 in some sort of sense, in real estate.

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1 THE COURT: I have another question for you.

2 So insofar as we're talking about specific  
3 jurisdiction and not general jurisdiction, to what extent do  
4 you think this, what you acknowledge now is that your client  
5 signed this form, to what extent might that play a part? Or  
6 are you saying what you just said answers that?

7 MR. SLOTNICK: Well, I think Your Honor would look  
8 at the facts.

9 THE COURT: Yes.

10 MR. SLOTNICK: And part of why I'm happy we're here  
11 on a premotion conference is because I would prefer, if I  
12 could, because I've been here before, to not make a motion to  
13 dismiss and then have a request to amend the complaint because  
14 the allegations are completely lacking, the jurisdictional  
15 allegations are completely lacking in the complaint.

16 If Plaintiff would amend their complaint, and I  
17 think that's probably the likely outcome, is that we make a  
18 motion to dismiss and then they say, well, we want to now  
19 amend --

20 THE COURT: Let them amend now.

21 MR. SLOTNICK: Why not amend now? Because there are  
22 no jurisdictional allegations.

23 THE COURT: You're my kind of defense attorney.

24 Right. Exactly.

25 MR. SLOTNICK: I'm happy to hear that.

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1 THE COURT: An amendment now.

2 MR. SLOTNICK: But my client would also, and any  
3 client, probably on both sides, would be happy to be able to  
4 get to the final complaint instead of taking a trip down the  
5 road and then going back to the start line.

6 THE COURT: All right.

7 How do you feel about that, Mr. Goldenberg?

8 MR. GOLDENBERG: Good afternoon, Your Honor.

9 With respect to amending the complaint, generally  
10 speaking, I agree with an efficient streamlined approach  
11 always, Your Honor, for many reasons, including costs to my  
12 client. That being said -- and we've always demonstrated good  
13 faith with Defendant's counsel to say if there's an issue,  
14 specific issue, let's discuss it, let's resolve it before  
15 having to go to the Court.

16 THE COURT: Okay.

17 Could you just stand -- you don't have to bend down  
18 into the microphone, but I think if you stand in front of it,  
19 that would be better.

20 MR. GOLDENBERG: Yes. Okay.

21 THE COURTROOM DEPUTY: You could actually move the  
22 mic.

23 MR. GOLDENBERG: Sorry about that, Your Honor.

24 THE COURT: Okay.

25 MR. GOLDENBERG: But before I proceed and make a

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1 blanket statement and say sure, we'll amend, we would like --

2 THE COURT: See if they want you to amend.

3 MR. GOLDENBERG: Right.

4 And since we started --

5 THE COURT: Fair enough. Okay.

6 MR. GOLDENBERG: -- with specific to general  
7 jurisdiction, I really regret not printing the full statute  
8 that we're talking about. But if my memory serves me  
9 correctly, it's -- and maybe Defendant's counsel has the full  
10 language. But after the ellipses that I put in, the statute  
11 is very, very inclusive. Its intent is very clear, from my  
12 memory, that really the point of jurisdiction is a no-brainer  
13 to me. I think there's general jurisdiction.

14 I think the company Zillow, for many reasons, on top  
15 of all of which are this one, the brokerage license speaks for  
16 itself that there is general jurisdiction. Zillow is a --  
17 what's the word I'm thinking? New York is a cornerstone for  
18 its business. You know, just the limited arguments that I put  
19 in this letter I think speak for themselves. In terms of  
20 the -- so on the point of our jurisdiction allegations or  
21 jurisdiction issues lacking to a point of motion to dismiss, I  
22 do not think that even requires a fuller briefing at this  
23 point. But to the extent that it does, before just going back  
24 to my client saying we need to start again, I would like an  
25 itemized point of what they think is missing.



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1           And then we haven't touched on the specific cause of  
2 action or why they think we haven't failed -- we failed to,  
3 you know, state a cause of action. I could address that at  
4 the next point of argument.

5           THE COURT: Okay.

6           MR. SLOTNICK: And, Your Honor, I would be happy to  
7 respond to that, and I think I've already done partially.

8           But the allegations with regards to at least the  
9 specific jurisdiction are lacking in that if you look at the  
10 first paragraph, it says that my client approached Plaintiff.  
11 That's all it says. It doesn't say how. My client is, you  
12 know, as I said, based in Washington. But how did they  
13 approach them? My understanding is there are no meetings in  
14 New York whatsoever, nothing that happened in New York.

15           THE COURT: Well, are you asking them -- normally  
16 this would happen in an affidavit on personal jurisdiction.  
17 But if the Plaintiff is willing, you can put it in the  
18 pleading, to put him -- I interrupted you, Mr. Slotnick. Go  
19 ahead.

20           MR. SLOTNICK: Thank you, Your Honor.

21           It's just that the complaint, when I read it, it  
22 doesn't include several things, including that Zillow was  
23 looking to exploit a South American market, not a New York  
24 market. And my understanding, which is not in this complaint,  
25 is when Zillow spoke to the people at Plaintiff, they were in

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1 Europe when they were speaking to them and so there's some  
2 e-mails here. I don't, I just, I don't think it's sufficient  
3 to form a specific jurisdiction basis.

4 THE COURT: Okay.

5 So let's turn to the second round, your 12(b)(6)  
6 motion. There are particular things that you would like to  
7 point to that you feel are missing in the complaint to state a  
8 claim and that the Plaintiff then could amend if so able.

9 MR. SLOTNICK: Thank you.

10 So I think the overall impression that one gets when  
11 reading this complaint, which is full of vagaries, is that  
12 Plaintiff was trying to build infrastructure to exploit an  
13 opportunity that Zillow had. And it's all over the complaint  
14 that this was going to be subject to a written agreement that  
15 never materialized. And I will just give a couple of  
16 examples.

17 In paragraph 3, it's written that Zillow was  
18 preparing a written agreement.

19 In paragraph 5, they didn't finalize any hires.

20 And there are many more, but I'm skipping.

21 In paragraph 28, Zillow says, according to the  
22 complaint, that they're likely to get sign-off on the project,  
23 which is in October of 2023. This whole negotiations ends  
24 soon thereafter.

25 In paragraph 30, Zillow is assessing Plaintiff's

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1 capacity to do the job.

2 And very importantly, in November, on November 23rd  
3 of 2023, which is a year ago, they discuss a scope of work and  
4 they say, oh, we're going to add something into the scope of  
5 work that was never finalized. So, it means it wasn't done.

6 And then on -- also in November, there were country  
7 lists of where these people, these hires, potential hires  
8 would come out of, all in South America, and they talk about  
9 they're revising the country list. So, this understanding  
10 that they have going on to form the basis of any claims  
11 doesn't exist.

12 And in paragraph 37, Zillow says a written agreement  
13 is forthcoming, which means it doesn't exist at that point in  
14 time.

15 And when you read the complaint, Your Honor, you see  
16 that this discussion about the project comes to a very quick  
17 end, at which point Plaintiff for the first time says, oh, by  
18 the way, you now owe us millions of dollars. There was never  
19 any discussion of expenses beforehand, at least not that I can  
20 see in the complaint, that -- and now they're in court saying  
21 you owe us \$4.2 million.

22 THE COURT: Now, where does -- are you finished or  
23 no?

24 MR. SLOTNICK: Well, I have a little more,  
25 Your Honor.

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1 THE COURT: Go ahead.

2 MR. SLOTNICK: So with regards to the promissory  
3 estoppel to pay all these expenses, there has to be notice of  
4 these expenses.

5 And I think what happened, and this is based on my  
6 reading of the complaint, is Nitka, Plaintiff, said we have an  
7 opportunity and we will do whatever we can to try and exploit  
8 it.

9 But Zillow never had an agreement. It never said:  
10 Incur these costs and we'll reimburse you.

11 And it's not in -- it's nowhere in here that they  
12 indicate -- even though they quote tons of e-mails and  
13 characterize, they don't say: We told Zillow we've spent  
14 \$250,000 at this point, we just want to make sure.

15 Because what they -- what Plaintiff says is: We  
16 need you to -- we need to be able to turn this on very  
17 quickly. We need to be able to flip the switch very quickly.

18 And so, what Plaintiff is doing is they're building  
19 an infrastructure unbeknownst, at least from the reading, to  
20 Zillow.

21 And there's no point where Plaintiff says: Hey, now  
22 we're at \$500,000, we just want to make sure you are going to  
23 pay us back. Hey, now we're at a million dollars of expenses  
24 even though you're telling us an agreement is coming.

25 They were not promised the work. They were promised

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1 an agreement to do the work.

2 And at which point, if the agreement was handed to  
3 Plaintiff, it's very likely that Plaintiff would have said: I  
4 can't agree to these terms. And the whole thing would have  
5 ended.

6 What they're actually seeking is more than they  
7 would have gotten if an agreement was finalized and they  
8 signed it. And they're just saying, well -- I think what  
9 happened is Plaintiff gave it their -- a shot to throw their  
10 hat in for the running for a project. And then, when it  
11 didn't work out, they say: Well, now you have to pay for  
12 everything.

13 THE COURT: Let me ask you a question.

14 Does anyone know why it didn't work out?

15 And the second question: Is there any possibility  
16 that these two parties might, in fact, want to work together?

17 MR. SLOTNICK: I don't have the answer certainly to  
18 the latter question.

19 THE COURT: Okay.

20 MR. SLOTNICK: And it's not clear from the complaint  
21 why it don't work out. They just said -- I think in one of  
22 the paragraphs they said --

23 THE COURT: Well, somebody in this room might know.

24 MR. SLOTNICK: Someone left. Someone from Zillow  
25 left and communicated to Plaintiff and they said the project

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1 that never started was shut down because Zillow actually never  
2 hired any of the employees that Plaintiff was going to suggest  
3 for them.

4 If Zillow did hire the individuals, these staff  
5 people, then potentially there would be a claim because then  
6 they -- then Zillow had a benefit that they hired these  
7 people. But it never got off the ground.

8 THE COURT: Okay.

9 All right. Mr. Goldenberg.

10 MR. McBRIDE: Your Honor, this is Alex McBride.  
11 I'll jump in and maybe Mr. Goldenberg can elaborate more on  
12 the specifics.

13 Actually, if you read this complaint, it's very  
14 detailed on a pattern of Zillow representing to our client to  
15 start interviewing and staffing up these resources in these  
16 other countries.

17 And, you know, we can just go to paragraph 33. To  
18 that end, on November 13, 2023, Nitka continued to update  
19 employee of Zillow in the staffing process.

20 November 14, 2023, next paragraph. Zillow instructs  
21 Nitka to proceed with further final-round screening.

22 E-mailing Nitka: Let's do tech interviews.

23 This is the timeline. They keep ramping up. So  
24 this notion that Zillow was ignorant of what we were doing is  
25 completely belied by the complaint allegations.

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1           Then at paragraph 44. We're settling into this year  
2 after all this work for Zillow. Our lead contact at Zillow  
3 suddenly leaves the company. We're told to, quote, hold off  
4 on sourcing and screening more people. More people.

5           THE COURT: Okay.

6           And do you know what happened other than this person  
7 left? Did someone else take over?

8           MR. GOLDENBERG: So, this dovetails into the point  
9 that I think discovery would yield a lot of information on  
10 this issue.

11           But I do -- I have my suspicions that it might have  
12 something to do with the -- just an internal change and the  
13 person who was first responsible for this project, and this  
14 was well further down the line than Plaintiff's counsel --  
15 Defendant's counsel says, which is that we threw our hat in  
16 the rink. Our hat, we never -- there was a rink to be thrown  
17 in, but we were chosen to proceed to this place. There was  
18 no -- at this -- after that initial approach, we -- there was  
19 communication and then there was I think an RFP and we were  
20 selected for the RFP and so on and so forth and went through  
21 the regular business. So we weren't competing at this point  
22 with other businesses. We were the business they were  
23 proceeding with. That's why we were ramping up and scheduling  
24 interviews.

25           And then at some point well after this ramping up

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1 process, this actual really performing the services process,  
2 Zillow for whatever reason decided -- and I have my suspicions  
3 I don't want to go on record for, but I think discovery will  
4 show this, but they changed course. And the person  
5 responsible for it left, whether consequentially or not, left  
6 and they -- maybe they saw that, oh, you know, we want to go  
7 in a different direction, they cut it off and then we were  
8 kind of left hanging in the basket.

9           There is something to be said that -- and Plaintiff  
10 has informed me and it will come out again in discovery or  
11 deposition -- it damaged us more beyond even these costs  
12 because our reputation, obviously. When you're looking for  
13 staff and doing interviews and suddenly you find out that this  
14 company that, you know, people go through all these rounds of  
15 interviews and suddenly you cut off and nobody knows why, now  
16 we're not a trustworthy source from both ends.

17           MR. McBRIDE: Your --

18           MR. SLOTNICK: Your Honor.

19           Okay. I'm sorry.

20           MR. McBRIDE: Just one quick point.

21           I mean, just taking a step back. I mean, the facts  
22 alleged here, we think -- and we will amend if we need to with  
23 more detail, but we think, as alleged now, are the hallmark of  
24 these type of quasi-contract claims. We were misled into  
25 doing all this work with assurances the deal would be



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1 consummated. I know that there are reasonable reliance  
2 arguments, Your Honor; that's a fact issue. But we've alleged  
3 the elements of promissory estoppel, we've alleged the  
4 elements of unjust enrichment and quantum meruit, at least on  
5 plausibility standard we believe to get to the next phase of  
6 the case. That's what this case is about.

7 We're not denying that there was no final written  
8 agreement entered; we agree with that. But that's not the  
9 claims. The claims we're bringing are quasi-contract claims.

10 MR. SLOTNICK: So, Your Honor, I just want to  
11 respond to a few things, if I may.

12 You know, Counsel read certain allegations in the  
13 complaint in which they said, oh, Zillow knew what was going  
14 on. There clearly was communication with Zillow about the  
15 process and there clearly was communication about the fact  
16 that there was not a deal and that one would be provided.

17 And Counsel just said that they were misled that a  
18 deal would be consummated, and I don't think that's in the  
19 complaint. I don't, I don't think it's in any e-mails because  
20 they didn't include it. And had this been a situation, that  
21 clearly would have been in writing somewhere. And they would  
22 have said: Hey, at this point we've spent over a million  
23 dollars, we just want to clarify or get some assurance. I  
24 think what they did was really a loss leader and they were  
25 trying to get business.

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1 But ultimately, they -- my client was not ignorant  
2 as to the fact that Plaintiff was trying to get this project.  
3 What my client certainly was ignorant about was how much money  
4 was spent.

5 And I just heard for the first time that there was  
6 an RFP and that Plaintiff won it. I have never heard that  
7 before. It's not in the complaint. In fact, it's  
8 contradicted by the first paragraph of Plaintiff's complaint  
9 where it says that Zillow approached and contacted Plaintiff.  
10 If there was an RFP, I would bet that that would be included  
11 in the complaint.

12 So, many of the allegations belie common sense. And  
13 the reason that there are such vagaries here is because I  
14 think the details, if they were here, would expose what this  
15 is. And it's -- there's no claim.

16 THE COURT: All right. Counsel, let me ask again.

17 You said, Mr. Slotnick, that you don't know and you  
18 have to ask your client whether there is any interest among  
19 the parties in restoring this project. It's not that old.

20 Is there any interest on the Plaintiff's part?

21 MR. GOLDENBERG: Plaintiff, absolutely, is ready for  
22 business any time.

23 Obviously, there's emotional damage a little, but  
24 Plaintiff's counsel has always come with an open hand and --

25 THE COURT: But is the Plaintiff?

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1 MR. GOLDENBERG: Plaintiff. That's what I meant.  
2 Plaintiff is, yes.

3 THE COURT: Okay.

4 MR. GOLDENBERG: Always room to talk.

5 THE COURT: So I do think that one of the first  
6 things the parties ought to think about is whether or not this  
7 is a project that the Defendant, in fact, may have an interest  
8 in and then resolution could occur as part of, you know,  
9 restarting your business negotiations. I have no idea if  
10 that's doable or not, but I think that that should be number  
11 one that you think about.

12 So, I think Mr. Slotnick has given you his thoughts  
13 as to what he thinks is missing from the complaint. It's up  
14 to you to decide what it is that you want or need to put into  
15 an amended complaint. And we can set a date for you to do  
16 that.

17 But the next thing that I wanted to talk to you  
18 about was discovery. As you saw in my minute entry setting  
19 this up, I didn't see why discovery should be stopped during  
20 the pendency of this motion. And I notice that you have a  
21 joint motion to stay in front of the magistrate judge. I did  
22 not read the papers, but I don't know what that's about and  
23 why there should be any stay here. It's not my general  
24 practice to stay discovery on a motion to dismiss, a proposed  
25 motion to dismiss, unless I am quite confident that the motion

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1 to dismiss is a slam dunk, and I have not reached that  
2 conclusion in this case. So I think that discovery should  
3 proceed even if both sides don't want to.

4 Go ahead.

5 MR. GOLDENBERG: I'm sorry, Your Honor.

6 To the extent there was a -- Defendant's counsel  
7 reached out about extending the time pending the motion. I  
8 only agreed to it because I was conducting a jury trial for  
9 the past two weeks, so I -- there was a date for the 19th to  
10 have a joint conference. We ended up having one on Friday --

11 THE COURT: Oh, okay.

12 MR. GOLDENBERG: -- with a colleague.

13 THE COURT: I didn't know that.

14 MR. GOLDENBERG: I'm more than happy to proceed with  
15 discovery. Jury trial is over.

16 THE COURT: What happened at your conference then?  
17 I don't think I knew there was a conference.

18 MR. GOLDENBERG: We had with your colleague Natalie.

19 MR. SLOTNICK: Natalie.

20 MR. GOLDENBERG: Yeah.

21 We just discussed --

22 MR. SLOTNICK: I think there was a conference  
23 scheduled with the magistrate for December 5th at 11:00 a.m.

24 And one thing I think it's --

25 THE COURT: Did you say December 5th?

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1 MR. SLOTNICK: December 5th. I believe 11:00 a.m.

2 THE COURT: All right. So that's good. Okay. All  
3 right.

4 MR. SLOTNICK: One thing, Your Honor, is, we have a  
5 counterclaim that we haven't brought, obviously, at this  
6 point.

7 But the parties also, I think, expressed a  
8 willingness to try and negotiate something through the ADR  
9 process.

10 But those are just two things that I wanted to raise  
11 with the Court.

12 THE COURT: All right.

13 Let me ask you this: Would you rather go through  
14 that process before there is an amended complaint? Save some  
15 more money if you can get it done quickly.

16 MR. SLOTNICK: I would have to get approval from my  
17 client, but I think the answer would be yes, Your Honor.

18 THE COURT: So, do you want to mediate with the  
19 magistrate judge or with our mediation program in the court or  
20 a private mediator?

21 MR. SLOTNICK: I don't think we would want to do a  
22 private mediator. I think it would be more cost effective to  
23 do it within the court.

24 THE COURT: Okay.

25 But do you mean with the MJ or do you want us to

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1 issue a mediation order?

2 MR. SLOTNICK: Either one would be acceptable.

3 THE COURT: Who is our magistrate judge?

4 MR. GOLDENBERG: Scanlon.

5 THE COURT: Judge Scanlon?

6 MR. SLOTNICK: Scanlon.

7 THE COURT: Oh. She is great.

8 I think you are going to see her on December 5th,  
9 which is right -- well, it's next week.

10 MR. GOLDENBERG: Mm-hm.

11 MR. SLOTNICK: Coming up.

12 THE COURT: Okay.

13 So, why don't we do this: Why don't you advise  
14 Judge Scanlon's office that based upon what happened at the  
15 conference today before me, the parties would like to begin to  
16 discuss settlement on December 5th, as well as anything else  
17 you want to discuss. Okay?

18 And so, you could do that by letter, a joint letter  
19 to Judge Scanlon's office. That would be helpful. Okay?

20 And then I would say, Mr. Slotnick, you ought to  
21 find out before then whether your client is or is not  
22 interested in doing business with Nitka because that will  
23 obviously be the first thing that you would want to know in  
24 terms of trying to resolve this.

25 Can I leave it to counsel then, if it doesn't work

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23

1 out, that you will reach some understanding on the schedule  
2 for the filing of an amended complaint and the motion to  
3 dismiss? We don't need to meet again, I don't think. I think  
4 I understand where we are at.

5 MR. SLOTNICK: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. GOLDENBERG: My only -- that's completely fine  
8 for Plaintiff.

9 Although, the only comment I'd make is that based on  
10 previous dealings with Defendant's counsel or Defendant -- and  
11 I say this with utmost respect. When the complaint was filed  
12 we were issued very, very strict, tight deadlines, which we've  
13 obviously accommodated and responded to promptly, because we  
14 had no choice because we were threatened with severe  
15 consequences. And despite our good-faith effort, numerous  
16 good-faith efforts, we kind of -- we met those deadlines and  
17 then we didn't hear from Defendant's counsel.

18 And so, when -- while I think we're more than  
19 capable of coming up with a briefing schedule, if it comes to  
20 that, we would like to put on record that we hope Defendant's  
21 counsel does not exercise such severe deadlines if we were to  
22 decide to make a motion to -- if we were to amend our  
23 complaint, not give us 48 hours to do that once we get to that  
24 point; that he would give reasonable time, obviously.

25 That's all.

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24

1 MR. SLOTNICK: I'm not sure why Counsel mentioned  
2 that because that is, like the complaint, very vague.

3 What we did was, when we saw this complaint, we  
4 said: You're in violation of an NDA. Because in this  
5 complaint they disclosed facts and circumstances that are  
6 covered by an NDA that Plaintiff signed. And when Counsel  
7 asked me to send it to him, even though his client had it, I  
8 immediately sent it to him. And I said: We would like you to  
9 seal or make an application to seal immediately.

10 So, I do take that last statement as a little bit of  
11 a left turn, trying to cast an aspersion to me. Because this  
12 will be the basis of our counterclaim, which we did threaten  
13 and they didn't seal it. And there will be a counterclaim if  
14 this proceeds because we believe that they are squarely in  
15 violation of the NDA and it's not taken lightly. This is  
16 information that is subject -- in that case, actually, subject  
17 to a written agreement. And so yes, we did take it very  
18 seriously.

19 I don't appreciate the aspersions by Counsel,  
20 however.

21 THE COURT: Okay, Counsel. Let's put all the  
22 aspersions aside. I trust everyone will act reasonably going  
23 forward and on dates. And obviously, if you can't reach  
24 agreement on the schedule, you will contact me and I will set  
25 the schedule. Usually counsel prefers to set their own



1 schedules by agreement rather than having me do it  
2 arbitrarily. So, it's up to you.

3 Okay. But I think we're in a good position right  
4 now. You will contact Judge Scanlon. If Judge Scanlon thinks  
5 it's wise, she can also order mediation with our court-annexed  
6 mediation which is very successful. Sometimes it takes two  
7 types of mediations to succeed. And so, I will leave that up  
8 to her.

9 Or if you decide you want a mediation order, you can  
10 always get in touch with Victor and he'll issue that too.

11 MR. SLOTNICK: Thank you.

12 THE COURT: Okay. So, is there anything else we can  
13 take care of today?

14 MR. GOLDENBERG: No. Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. SLOTNICK: Other than the clock, I think we're  
17 done.

18 Thank you, Your Honor.

19 THE COURT: Thank you so much.

20 MR. McBRIDE: Thank you, Your Honor. Have a happy  
21 Thanksgiving.

22 THE COURT: Thank you.

23 MR. GOLDENBERG: Happy holidays.

24 (Matter concluded.)  
25